IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CP/193/2006

CENTRAL BANK OF INDIA .. Petitioner

V/S
VASANT RAMA DHODI ... Respondent

Mr. S. U. Uttam i/b. M/S.MULLA AND MULLA AND C .B.C. For petitioner.
Mr. D. H. Mehta i/b. A. H. KHATRI for respondent.

CORAM: D. G. KARNIK **J.**

DATE: 11th October, 2006

P.C.:

1. Heard learned counsel for the parties.

2. This contempt petition has been filed by the petitioner alleging that the respondent has committed breach of the order passed by the Debt Recovery Tribunal dated 11th February 2005 in O. A. No. 288 of 2004 and has thereby committed contempt of the court.

3. By the said order dated 11th February 2005, the Tribunal restrained the respondent to deal with or create any charge in any manner on the properties hypothecated or mortgaged to

the petitioner bank. A public notice was published by the Bombay Municipal Corporation (for short BMC), in Free Press Journal wherein it is stated that the respondent herein along with others had come forward for surrendering certain land, free of encumbrances to the BMC, in lieu of TDR. The public notice invited objection if any, to the said transaction. According to the petitioner the land which is the subject matter of the public notice is mortgaged to the petitioner and therefore is covered by the order of injunction passed on 11th February 2006. According to the petitioner the respondent has committed contempt of the court by offering to surrender the said land to the BMC.

4. In para 14 of the affidavit in reply the respondent has admitted that he had offered to surrender part of the property which was reserved for public garden under the development plan to the BMC and to obtain TDR in lieu thereof. Learned counsel for the respondent however, submitted that the public notice was issued by the BMC only to ascertain claims of third parties before entering into any agreement. The respondent has not entered into any agreement with the BMC nor has he surrendered of any part of the property. The respondent would not actually surrender the property while the injunction is in force. Assuming that the respondent intended to surrender the property he may change his intention at any time and may not actually surrender the

property. The contempt would be committed only if he surrenders the property. Mere intention is not a crime and not a contempt. A person who intends to commit a breach may change his plans even at the last minute, who may out of fear of punishment for contempt may change his mind and not proceed further. Therefore he submits that the contempt petition is pre-mature and presently there is no contempt.

5. Learned counsel for the petitioner is unable to point out any material to show that the respondent has surrendered or otherwise already dealt with the property in any manner , in breach of the order of injunction. In the circumstances no case for contempt is made out at this stage. Contempt petition is accordingly dismissed summarily.

(D.G. KARNIK J.)